into the United States. The judgment in the leading case of *Downes* v. *Bidwell* (1900), 182 U. S. 244, although dissented to by four justices, determined that Porto Rico was not incorporated into the United States so as to include it in the sense of the "revenue laws". For the same reason the court held in *Dorr* v. *United States* (1904), 195 U. S. 138, that in the Philippine Islands the plaintiff was not entitled to a trial by jury. The court said: "We conclude that the power of Congress to govern territories does not require that body to enact * * * a system of laws which shall include the right of trial by jury. The Philippine Islands are held only under the sovereignty of the United States."

CONTRACT—ACTION FOR BREACH—QUESTION FOR JURY.—The president of one corporation called up the agent of another by telephone and asked him to enter his order, and then sent it in writing. The order was received without objection, but subsequently, the price of the goods advancing, the defendant refused to fill it. *Held,* that whether the telephone conversation, together with the written order, constituted a contract was a question of fact for the jury and that a direction of a verdict for the defendant at the close of the plaintiff's evidence was error. *Monarch Electric & Wire Co.* v. *The National Conduit and Cable Co.,* — (C. C. A., Seventh Circuit) —, 138 Fed. Rep. 18.

No doubt the order granting a new trial was correct, for leaving out the question of agency, the plaintiff's evidence seems to make out a contract; nevertheless, the proposition of law as laid down by the appellate court is open to question. What the parties said and their intention to enter into a contract are questions for the jury, but it is for the court to say whether what they say amounts to a contract and what its effect may be. ANSON ON CONTRACTS, p. 238; 2 PARSONS ON CONTRACTS, p. 648. Contra, *Edwards* v. *Goldsmith,* 16 Pa. St. 43.

CONTRACT—EFFECT OF ASSIGNMENT OF A DRAMSHOP LICENSE AS PART CONSIDERATION.—Plaintiff sues on a promissory note for $4,000 given as part consideration for the "goods, license, good will, etc.," of the Joplin Hotel Bar. *Held,* the inclusion of the seller's license in a sale of a saloon, liquors, fixtures, and good will renders the whole contract, and the note given therefor, void, under Rev. St., 1899, § 2992, prohibiting the transfer or assignment of a dramshop license. *Sawyer* v. *Sanderson et al.* (1905), — Mo. —, 88 S. W. Rep. 151.

The lower court ruled that the mere attempt to sell the license would not vitiate the entire contract of sale unless both parties intended that it should be utilized by the defendants in conducting the business—a question for the jury, who found for the plaintiff. This court, reversing the judgment, said: "The consideration being single and indivisible, it seems to us that part of the single and inseparable consideration being void, the contract as a whole is void, because opposed to positive law." *Dow* v. *Taylor,* 71 Vt. 337; *Gerlach,* v. *Skinner,* 34 Kan. 86. This proposition is indubitably correct, but is the consideration here single and inseparable? The many cases cited to support this conclusion are not directly in point, because it is not questioned that

a contract in contravention of a statute is void. *Penn* v. *Bornman,* 102 Ill. 523. Indeed, this point is urged by the plaintiff: the transfer of the license is void by statute, but the fixtures and stock of liquors furnish sufficient consideration to uphold the contract. *Pierce* v. *Pierce,* 17 Ind. App. 107; *Strahn* v. *Hamilton,* 38 Ind. 57; *Mitchell* v. *Branham,* 104 Mo. App. 480. The above cases involve the same state of facts presented here and hold the consideration divisible. A lawful promise made for a lawful consideration is not invalid merely because an unlawful promise was made at the same time and for the same consideration. CLARK ON CONTRACTS, p. 474; *Ohio ex rel.* v. *Board of Education,* 35 O. St. 519. A contract is not necessarily void because its performance may have led incidentally to a violation of the law, if that was not its necessary consequence. *Mitchell* v. *Branham,* supra; *Michael* v. *Bacon,* 49 Mo. 474. However, the remark of GOODE, J., dissenting, is significant: "The purpose of the statute is not to prohibit the sale of a dramshop license, but to deny any one but the original licensee the right to keep a dramshop under it." The jury were instructed that if any part of the consideration for the note sued on was for the transfer of the license their finding should be for the defendant. The reversal, therefore, seems justified only by a different view as to the intention of the parties.

CORPORATIONS — INSOLVENCY — SALE — CREDITORS' BILL — PREFERENCES TO OFFICERS.—Defendant company having become insolvent, M, its president, negotiated a sale of its assets, and submitted to the company the proposition to sell, together with a list of the indebtedness, including debts owing to himself and others for which he was liable as surety, the total being in excess of the selling price. The sale having been sanctioned by the stockholders and directors, M used the proceeds to discharge the scheduled debts and others also. Complainants, who are unpaid creditors, file a creditors' bill, on the ground that the president was a trustee of the proceeds of the sale, for the benefit of all creditors. *Held,* that the bill is not maintainable. *O. W. Shipman Co.* v. *Detroit, L. S. & Mt. C. Ry. et al.* (1905), — Mich. —, 104 N. W. Rep. 24.

At common law a corporation may dispose of its property in the same manner as any individual, and may, therefore, make an assignment with preferences. *Catlin* v. *Eagle Bank,* 6 Conn. 233; *Nat. Bank* v. *Allen,* 90 Fed. 545; *Blair* v. *Ill. Steel Co.,* 159 Ill. 350, 42 N. E. 895. Contra: *Rouse, Trustee* v. *Merchants' Nat. Bank,* 46 Ohio St. 493, 15 Am. St. Rep. 644; 2 WILGUS CORP. CASES, 1819; *Lyons Thomas Hardware Co.* v. *Perry Stove Mfg. Co.,* 86 Tex. 143, 24 S. W. 16, 22 L. R. A. 802 and note. But this has been changed by statute in many states. In construing 3 How. Stat. § 8739, which voids assignments for the benefit of creditors, if made with preferences, the Supreme Court of Michigan has held that this applies only where the debtor makes a common law assignment. *Neuman* v. *Mining Co.,* 57 Mich. 97, 23 N. W. 600; *Nat. Bank* v. *First Nat. Bank,* 100 Mich. 485, 59 N. W. 231; and therefore the transaction in the principal case was not within the terms of the statute. But even at common law, preferences to directors and other officers have been held illegal. *Bradley* v. *Farwell,* 1 Holmes (U. S.) 433; *Mallory* v. *Kirkpatrick,* 54 N. J. Eq. 50; *Olney* v. *Conanicut Land Co.,*